

managed the E-Rate bid process on behalf of a school district, a total of 31 times dating back to Year Three of the Federal E-Rate program, MTG has received a contract award each and every time. Of the 11 school districts where MTG is currently doing work, 10 of these districts had their bid process managed by Alemar. A true and correct copy of a print-out from the USAC web site showing E-Rate contracts on which Alemar and MTG have collaborated is attached hereto as Exhibit R.

47. There is also a long-standing relationship between Alemar and Informed Resources – the company that conducted the mandatory walk-through for ACBOE – similar to that between Alemar and MTG. Informed Resources has received several contracts for bids managed by Alemar. See Exhibit R. Moreover, and contrary to the statements made by Jon Holt (who conducted the Year Six mandatory walk-through), ACBOE representative Marilyn Cohen admitted that Holt may actually be an employee of *Alemar*, which would constitute a conflict of interest and violation of the bidding statutes to the extent Informed Resources is awarded contracts by Alemar.

48. Neither ACBOE nor Alemar disclosed to RelComm that, every time Alemar manages an E-Rate program bid for a school district, MTG and Informed Resources invariably receive the contracts.

49. If MTG is permitted to go forward with its Year Six contract, it will, presumably, perform it in full, which will entail, among other things, dismantling the existing ACBOE data network and replacing it with unnecessary new equipment. I have been informed that that process has already commenced. In fact, upon information and belief MTG is already in the process of performing the contract, and to date has submitted to ACBOE purchase orders totaling \$300,000.

50. However, I believe that ACBOE does not really intend to dismantle and replace all of its practically brand new network, which was designed to more than satisfy all of ACBOE's data network needs well into the future. Instead, I believe that ACBOE is planning to use a large portion of the Year Six E-Rate funds to help close its recently publicized budget deficits in non-E-Rate funded programs. True and correct copies of recent newspaper articles about ACBOE are attached hereto as Exhibit S.

51. On December 13, 2003, ACBOE announced its intention to solicit bids for Year Seven of the E-Rate program by posting its Form 470 on the SLD website. Again, as with its Year Six solicitation, ACBOE hired Alemar and Friedman to draft its Form 470, conduct the bidding process for its Year Seven application and recommend award recipients to ACBOE.

52. The Form 470 drafted by Alemar and Friedman is, again, unrelated in any way to ACBOE's Technology Plan or needs. Instead, Alemar copied, word for word, the "winning bid" submitted by MTG for Year Six onto the Year Seven Form 470. A true and correct copy of the Year Seven Form 470 is attached hereto as Exhibit T. It included the identical items and product numbers as had been contained in MTG's Year Six bid. It even called for the same particular product brands and the specific configuration of products contained in MTG's Year Six bid.

53. RelComm requested information about the Year Seven bid from Alemar on December 18, 2003. In response, Friedman, in an e-mail dated the evening of December 19, 2003, stated the bid specifications, which included notice of a mandatory bid conference and walk-through, but did not specify the date of the walk-through. A true and correct copy of Friedman's response is attached hereto as Exhibit U.

54. When RelComm requested further information, Friedman responded on December 23, 2003, that a technical walk-through, which was a pre-condition for submitting a bid, was scheduled for January 6, 2004. A true and correct copy of Friedman's response is

attached hereto as Exhibit V. Friedman did not inform RelComm in either his December 19 or 23 e-mails that a walk-through of the facilities had already occurred earlier in the day on December 19, which RelComm would have attended had it been notified about it.

55. Pursuant to N.J.S.A. 18A:18A-15, RelComm lodged a challenge to the bid with ACBOE in response to the Year Seven Form 470. In a letter to ACBOE faxed on January 7, 2004 and hand-delivered on January 8, 2004, with a copy to Christopher Brown, Esquire (ACBOE's solicitor), RelComm put ACBOE on notice that its Year Seven Form 470 violated New Jersey law in the following respects:

- (1) The bid specifications again required a mandatory walk-through of the ACBOE facilities in violation of New Jersey bidding statutes and E-Rate regulations, as ACBOE did not follow any other portions of the New Jersey bidding statutory procedures;
- (2) The mandatory walk-through was scheduled for January 6, 2004, just 3 business days prior to the arbitrary deadline established by ACBOE and Alemar for the submission of bids. Defendant Friedman, who conducted the tour, refused to allow audio or video taping during any part of the tour, in violation of well-established procedures followed in New Jersey for public bids;
- (3) The site diagrams given to the prospective bidders during the tour did not provide vital information needed for the bid and were only diagrams utilized for fire code inspections,

and not network diagrams consisting of wiring runs,
equipment locations or specifications of any kind;

- (4) Friedman told prospective vendors at the walk-through that they should include with their quote a Design Study for the District -- something the District was supposed to have done before applying for E-Rate moneys. He also told vendors that they could add a contingency fee to cover unforeseen conditions not contained in the specifications. Contingency fees, although e-ratable, are meant to cover true emergencies and unforeseen circumstances, not poorly thought out and prepared bid specifications;
- (5) The bid specifications contained in the Year Seven Form 470 are not a re-bidding of the Year Six Form 470, as represented by Friedman during the tour, but, instead, are an exact copy of MTG's Year Six bid. Thus, the Year Seven bidders were told to bid on specifications actually drafted by MTG, the prior year's awardee;
- (6) MTG's participation in the walk-through as a potential bidder on a project for which it had drafted the specifications violates both New Jersey bidding statutes and E-Rate regulations;
- (7) Certain bid specifications call for particular brand names and certifications without any provision for equivalents, in violation of the New Jersey bidding statutes;

- (8) The bid specifications contain numerous technical defects (including calling for replacement of wiring that has 17 years left under warranty) and are technically deficient, in that they omit critical items that are required by the listed configurations; and,
- (9) During the walk-through, after Friedman declined to answer RelComm's question about who developed the bid specifications, Marilyn Cohen, Assistant Superintendent, announced, contrary to fact, that the specifications had been developed by a committee comprised of Nickels, Haye and her.

A true and correct copy of this letter is attached hereto as Exhibit W.

56. ACBOE ignored RelComm's bid challenge in violation of N.J.S.A.18A:18A-15. Instead, at a Board meeting on January 27, 2004, ACBOE voted to approve ACBOE's participation in the Year Seven E-Rate program, and, immediately thereafter, Friedman announced that MTG had been awarded a contract by ACBOE for Year Seven. The Form 471 filed with the SLD by ACBOE requesting funding for the Year Seven contract awarded to MTG omitted reference to the High School facility, despite that the High School had been included in the specifications on ACBOE's Form 471. A true and correct copy of the Form 471 is attached hereto as Exhibit X. I believe this was done intentionally by ACBOE, at Friedman's suggestion, to bump ACBOE's school lunch participation figures up from 87% to 90%.

57. The SLD states on its web site that it relies, in part, on private litigants to alert it to possible violations of its regulations and procedures. It is my understanding from conversations that I have had over the years with SLD personnel that the SLD has a very small

enforcement staff and relies upon private parties in connection with its enforcement activities out of necessity. Attached hereto as Exhibit Y is a page from the USAC web site, www.sl.universalservice.org (List of Persons Suspended or Debarred from the Schools and Libraries Support Mechanism), which illustrates this point. Attached hereto as Exhibit Z are copies of three suspension notices from the FCC.

58. Attached hereto as Exhibit AA is a true and correct copy of a page from the USAC web site, www.sl.universalservice.org (Ch. 5 – Service Provider Role in Assisting Customers).

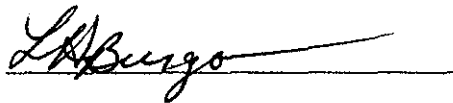
59. Attached hereto as Exhibit BB are true and correct copies of the Information and Memorandum of Plea Agreement in the case of United States v. Maynard, No. CRI-03-5325 (E.D.Ca. August 19, 2003; August 26, 2003).

60. Attached hereto as Exhibit CC is a true and correct copy of the Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form.

I hereby certify that the foregoing statements made by me are true and correct. I hereby certify that if any of the foregoing statements made by me are willfully false, I will be subject to punishment.


MICHAEL SHEA

Sworn to and subscribed before me
this 19th day of April, 2004.



LORIE A. BURGO
A Notary Public Of New Jersey
My Commission Expires 9/3/2007

Exhibit A

RECEIVED and
FILED

FEB 13 2004

ATLANTIC COUNTY
LAW DIVISION

FLASTER/GREENBERG P.C.

By: J. Philip Kirchner, Esquire

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Phone: (856) 661-1900

Attorneys for Plaintiff, RelComm, Inc.

RELCOMM, INC.

Plaintiff,

vs.

: SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

: ATLANTIC COUNTY

ATLANTIC CITY BOARD OF EDUCATION;

FREDRICK P. NICKELS; MICRO

TECHNOLOGY GROUPE, INC.; DONNA

HAYE; MARTIN FRIEDMAN; ALEMAR

CONSULTING; and JOHN DOES, 1-20,

: DOCKET NO. ATL-L-477-04

: Civil Action

: **COMPLAINT AND JURY DEMAND**

Defendants.

RelComm, Inc. ("RelComm") for its complaint against the defendants states as follows:

A. THE PARTIES

1. RelComm is a New Jersey corporation with its principal place of business located at 408 Bloomfield Drive, Suite 3, West Berlin, New Jersey. RelComm is in the business of designing, installing and maintaining computer networks, including both hardware and software, for, among other things, municipal and other public entities, including various school boards.

2. Defendant Atlantic City Board of Education ("ACBOE") is a New Jersey municipal corporation charged with the responsibility of supervising all public education activities within the Atlantic City School District. ACBOE's principal place of business is located at 1809 Pacific Avenue, Atlantic City, New Jersey.

3. Defendant Fredrick P. Nickels ("Nickels") is the Superintendent of Schools hired by ACBOE to run the Atlantic City School District. Nickels' office is located at 1809 Pacific Avenue, Atlantic City, New Jersey.

4. Micro Technology Groupe, Inc. ("MTG") is a Pennsylvania corporation with its principal place of business located at 311A Old Rodgers Road, Bristol, Pennsylvania, 19007.

MTG does business in the State of New Jersey and Atlantic County.

5. Donna Haye ("Haye") is the Assistant Superintendent of the Atlantic City School District.

6. Alemar Consulting ("Alemar") is, upon information and belief, a Pennsylvania corporation with its principal place of business located at 442 Lyndhurst Drive, Broomall, PA, 19008. Alemar does business in the State of New Jersey and Atlantic County.

7. Martin Friedman ("Friedman") is the President of Alemar.

8. John Doe defendants 1-20 are individuals or entities that participated in the bid-rigging scheme described in this complaint but whose identities are presently unknown to the plaintiff.

B. FACTS

9. RelComm has been in business since 1998. RelComm specializes in providing data network solutions for, among others, municipal and other public entities, including school boards, municipalities and libraries.

10. The ACBOE is a municipal corporation charged with the responsibility for overseeing all educational and business activities of the Atlantic City School District.

11. Nickels is the Superintendent of Schools for the Atlantic City School District. Nickels reports to the ACBOE. Haye, the Assistant Superintendent, reports to Nickels.

12. MTG is in the business of selling and servicing computer equipment and systems. MTG does business in the State of New Jersey.

13. As part of the Telecommunications Act of 1996, codified at 47 U.S.C.A. §151, et seq., Congress established a universal service support mechanism for schools and libraries,

which is commonly referred to as the "E-Rate" program. The E-Rate program is administered by the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). The E-Rate program is run under the auspices of the Federal Communications Commission ("FCC").

14. ACBOE first submitted an application for funding under the E-Rate program in or about 1998. In connection with that application, it selected a bid from Lucent Technologies to provide voice and data networking equipment to ACBOE, and Lucent was identified in the Form 471 Application submitted by ACBOE to the SLD for approval of its application.

15. ACBOE's application for Year One of the E-Rate program was approved by the SLD and was funded in 1999.

16. ACBOE submitted a second application for funding for Year Two of the E-Rate program in 1999. That application again identified Lucent Technologies as its selected vendor. In or about June, 1999 ACBOE decided that Lucent Technologies was not able to service its network needs and decided to switch vendors to Plaintiff RelComm. ACBOE and Lucent Technologies reached an agreement, which allowed ACBOE to switch its vendor for Year Two of the E-Rate program to RelComm.

17. RelComm proceeded to perform services and to provide equipment to ACBOE under the grant received by ACBOE for Year Two of the E-Rate program.

18. Federal E-Rate funding provides only a portion of the funding requested in the Form 470 Application. E-Rate funding is pegged to the percentage of students in the school district who participate in the federal school lunch program. Because Atlantic City has represented to the SLD that approximately 87% of the Atlantic City School District's students participate in the school lunch program, the award to ACBOE under the E-Rate program for each

year that it has received funding has been 87% of the total amount requested in each year by ACBOE.

19. The remaining percentage of funding not covered by the E-Rate grant award – in ACBOE's case, 13% – must be paid by the applicant school board. It is a violation of federal law and the E-Rate program rules for a school board to agree to receive funding from the SLD as part of the E-Rate program, but not to pay the unfunded portion of the application amount.

20. RelComm received payment directly from the SLD for ACBOE's Year Two award in the amount of \$507,561.60 (which was 87% of the amount requested by ACBOE).

21. ACBOE paid RelComm the 13% unfunded portion of the application amount for Year Two in the amount of \$95,648.40.

22. ACBOE again applied for funding for Year Three of the E-Rate program in 2001 and identified RelComm as its selected vendor. However, two of the line items, including the line item for maintenance of the existing network, in its application were determined by the SLD to be non-conforming, and, as a result, that portion of the application was denied. ACBOE's appeal from the denial of funding for Year Three was also denied. Nonetheless, the network of equipment and software that had been installed by both Lucent Technologies and RelComm

during Years One and Two of ACBOE's funding by the E-Rate program needed to be maintained. As a result, ACBOE and RelComm continued to operate under the terms of the Services and Maintenance Agreement entered into for Year Two by ACBOE and RelComm, for RelComm to provide maintenance of ACBOE's network at the rate and in the amount specified in ACBOE's Year Three application for E-Rate program funding.

23. RelComm performed all of its duties under its agreement with ACBOE to provide network maintenance during 2000 (Year Three). The amount owed to RelComm for that work is

now due from the ACBOE in the amount of \$480,000, as the ACBOE's appeal was denied as of January, 2003. Despite its agreement with RelComm, however, ACBOE has failed and refused to pay RelComm for its network maintenance services during Year Three.

24. ACBOE again applied for funding in Year Four of the federal E-Rate program in the amount of \$3,095,200. ACBOE's Year Four funding request again identified RelComm as a selected vendor. ACBOE's Year Four application was approved by the SLD and funding in the amount of \$2,692,824 was awarded to ACBOE and paid by the SLD to RelComm in April, 2002, representing 87% of the amount requested by ACBOE for Year Four.

25. RelComm provided all of the services and equipment that it promised to provide as part of ACBOE's Year Four application for funding under the E-Rate program. RelComm has invoiced ACBOE for the unfunded portion of its Year Four application (13%) in the amount of \$402,000. However, despite its agreement with RelComm, ACBOE has failed and refused to pay RelComm any of the amount owed.

26. ACBOE's failure to pay the unfunded portion of the Year Four E-Rate program application amount is a violation of federal law and the E-Rate program rules.

27. ACBOE again applied for funding during Year Five of the E-Rate program in January, 2002. ACBOE's Year Five application again identified RelComm as a selected vendor. The SLD approved ACBOE's Year Five application several months later in 2002 but funding has not yet been released.

28. RelComm has already provided all of the network maintenance services required by ACBOE's Year Five grant application. RelComm is also prepared to install all of the hardware included in ACBOE's Year Five E-Rate program application. Despite its obligations to RelComm under the Year Five E-Rate program award, ACBOE, through its representatives,

has stated to RelComm that it does not recognize any contractual obligations to RelComm and that it currently has no intention of paying RelComm the unfunded portion of the Year Five application amount.

29. RelComm demanded reasonable assurances from ACBOE of its intentions to comply with the Year Five E-Rate funding requirements, but ACBOE refused to provide RelComm with reasonable assurances and, instead, stated to RelComm that it does not recognize any contractual obligations to RelComm for any Year Five services.

30. ACBOE's attempts to abrogate its contractual obligations to RelComm occurred shortly before it was revealed that ACBOE is facing a multi-million dollar budget deficit for the 2002-03 fiscal year.

31. In early 2003, ACBOE indicated its intention to submit an application for funding to the SLD under Year Six of the E-Rate program. In this regard, ACBOE solicited bids from qualified vendors to provide ACBOE with the services and equipment to be requested by ACBOE in its Year Six application. ACBOE, acting through its superintendent, Nickels, without the approval of the Board Members, hired Alemar through its President, Friedman, as a consultant to manage its bidding process for Year Six and to recommend a winning bidder to receive the contract.

32. At the same time, ACBOE posted a Form 470 soliciting bids to perform network maintenance services for ACBOE for Year Six. At the end of the 28 waiting period mandated by E-Rate program regulations, RelComm was the only bidder. As a result, ACBOE's qualified representative, Jon Jones, who at the time was the Atlantic City School District Data Center Manager, informed RelComm that it would be contracted to provide network maintenance services to ACBOE for Year Six of the E-Rate program. However, when defendant Nickels

learned that Jones intended to award a contract to RelComm, he instructed Jones that he was prohibited from awarding any contract to RelComm. ACBOE, through Jones, at Nickels' instructions, then informed RelComm that it would not be selected as a vendor for any part of ACBOE's Year Six application and, in fact, following a bidding process tainted by numerous irregularities, ACBOE selected another vendor for participation in its Year Six E-Rate application, the Defendant MTG.

33. ACBOE's Year Six E-Rate program bidding process violated federal law and state law in many respects. First, ACBOE stated that only vendors who participated in an on-site tour of the Atlantic City School District buildings and facilities, which was conducted on January 24, 2003 by Alemar, the consultant hired by ACBOE, would be considered qualified bidders for ACBOE's Year Six application. This is a violation of E-Rate program rules and federal bidding statutes, which require that all qualified vendors, no matter where geographically situated, be eligible to bid on federally funding grant projects.

34. The Form 470 drafted by Alemar for ACBOE also violated E-Rate program rules and state bidding statutes. The specifications contained in the Form 470 provided no details as to what ACBOE was seeking from bidders and was not related in any way to the District's own Technology Plan. Instead of describing with specificity the items solicited in the bid, it requested a "best solution" proposal to include "all items eligible" for funding under the E-Rate program.

35. ACBOE's Year Six E-Rate bidding process was also tainted by misinformation distributed by ACBOE to bidders prior to and during the January 24, 2003 tour of the facilities. For example, ACBOE told bidders at the walk-through that ACBOE was interested only in expansion of its existing network structure and that the expansion must be compatible with the

existing network. However, the contract awarded to MTG includes \$1.3 million for the purchase of new network equipment, including 49 new servers, which are meant to replace the existing network, not expand it. When RelComm requested clarification of certain aspects of the bid request at the walk-through, it was informed that its questions could not be answered.

36. At its meeting on February 11, 2003, ACBOE announced that it had selected Defendant MTG as the successful bidder and was submitting an application for Year Six E-Rate funding in the amount of \$3.6 million. However, the MTG bid and the application submitted to SLD for Year Six funding did not comply with the bid specifications given to RelComm and other bidders. For example, the award to MTG included \$800,000 to install a video PBX, which was not contained anywhere in the specifications published by ACBOE. In addition, the award to MTG included equipment to be installed at locations that were not mentioned in the specifications. The bid specifications published by ACBOE and drafted by Alemar were so confusing and misleading that the bids submitted in response to them ranged from approximately \$200,000 to \$3.6 million, a variation of 1800%. MTG's winning bid was the highest at \$3.6 million. The next highest bid was less than half that amount at \$1.4 million, but it was disqualified because it contained items that do not qualify for E-rate program funding. MTG's bid, however, also contained \$86,500 of non-E-Ratable items, but it was not disqualified by ACBOE or Alemar. On information and belief, therefore, ACBOE and Alemar gave MTG either different specifications or modified specifications that were not given to RelComm or other bidders. Thus, the bid awarded to MTG was rigged and fraudulent, in that MTG was awarded the bid without any competition from other bidders, who were bidding on specifications that were different from those on which MTG was bidding.

37. The unlawful nature of MTG's winning bid is also demonstrated by the wastefulness of its expenditures at taxpayers' expense. For example, the MTG contract award calls for rewiring of the entire ACBOE network, despite that the existing warranty is only 3 years old and has 17 years remaining on the 20-year warranty included with its purchase.

38. Alemar was extensively involved in both the bid process and events subsequent to the bid award. To illustrate, Alemar was responsible for conducting the on-site tour of the Atlantic City School District buildings and facilities, which was conducted on January 24, 2003. ACBOE had announced in its bid specifications, which were drafted by Alemar, that attendance at the on-site tour of the ACBOE facilities was a mandatory pre-condition for submitting a bid. Alemar also filled out the federal 470 and 471 Forms in connection with ACBOE's application for Year Six E-Rate Program funding. Finally, Alemar solicited specific vendors, including MTG, to submit a bid to ACBOE for Year Six. Alemar thus, in violation of ACBOE's policies and procedures, performed extensive work for ACBOE, at defendant Nickels' direction, including preparing the bid specifications and completing the 470 Form, without a purchase order or approval of the school board.

39. Alemar has previously acted as the bid manager for other school districts in the Commonwealth of Pennsylvania and in New Jersey. In every instance in which Alemar has managed the E-rate bid process on behalf of a school district, a total of 31 times dating back to Year 3 of the Federal E-rate program, MTG has received a contract award each and every time. Of the 11 school districts where MTG is currently doing work, 10 of these districts had their bid process managed by Alemar.

40. After the Form 470 application was posted, which contained the specifications for the Year Six bid, RelComm posed a number of technical questions to Alemar so that it could

submit a proper bid. To illustrate, RelComm tried on numerous occasions to get clarification from Alemar and ACBOE as to the exact locations of the equipment to be installed, but to no avail. RelComm's confusion was caused by the fact that Alemar prepared one 470 Form for the entire district (excluding the High School facility) and then separate 470 Forms for each separate building in the district (again, with the exception of the High School facility). RelComm finally resorted to submitting separate bids for the entire district and for each specific location.

Whenever RelComm requested clarification, Alemar responded that adequate responses and information could not be obtained from ACBOE, but that all questions would be answered at the on-site tour of the ACBOE facilities.

41. At the January 24, 2003 walk-through, RelComm again posed its questions but was told by the person conducting the tour, John Holt of Informed Resources, that he did not have answers to any of RelComm's questions. In addition, Alemar provided misinformation to RelComm and the other prospective bidders at the walk-through. For example, according to the bid specifications contained in the Form 470, the High School facility was only to receive telecommunications services, and was not to be included in the bid for internal data connections. However, contrary to the bid specifications, MTG received a contract that included data equipment and services for the High School, totaling \$227,391. In addition, Alemar told prospective bidders that the bid for internal connections was for network enhancements, not a complete overhaul of the network, but the contract awarded to MTG includes the replacement of a significant portion of the network, including all of the existing wiring, which is only 3 years old and is covered by 17 remaining years of the original 20 year warranty.

42. Alemar conducted a second unannounced walk-through of the High School facilities, to which RelComm and the other bidders were not invited. Only MTG was told by

Aleamar to include the High School facilities in its bid, so MTG's winning bid was the only one that included the High School building. The bid specifications distributed to RelComm and the other bidders made no mention of the internal connections at the High School facility. The bid specifications drafted by Aleamar and posted by ACBOE were conspicuous in their failure to include the High School facilities in the bid. RelComm believes that this omission was intended by ACBOE, because inclusion of the high school student body in the E-Rate program calculation would have lowered the percentage of funding provided by the federal government. In prior years, with the High School students included in the calculation, ACBOE had submitted its Form 471 indicating that 87% of its student body participated in the school lunch program. By excluding the High School from its Year Six Forms 470 and 471, ACBOE was able to increase its school lunch percentage to 90%, thereby making it more likely that its request would be funded. As a result, the cost of the internal connections at the High School, which is in excess of \$200,000, will now be borne fully by the local taxpayers.

43. Only school districts and schools whose school lunch participation level is at 90% or higher are guaranteed funding under E-rate program regulations.

44. Aleamar, as the manager of the bid process, ultimately recommended to ACBOE that MTG receive the award for the ACBOE Year-Six project, as it had previously done whenever it has acted as a bid manager for Pennsylvania schools.

45. On December 13, 2003, ACBOE announced its intention to solicit bids for Year Seven of the E-Rate program by posting its Form 470 on the SLD website. Again, as with its Year Six solicitation, ACBOE hired Aleamar and Friedman to draft its Form 470, conduct the bidding process for its Year Seven application and recommend award recipients to ACBOE.

46. The Form 470 drafted by Alemar and Friedman is, again, unrelated in any way to ACBOE's Technology Plan or needs. Instead, Alemar copied, word for word, the "winning bid" submitted by MTG for Year Six onto the Year Seven Form 470. It included the identical items and product numbers as had been contained in MTG's Year Six bid. It even called for the same particular product brands and the specific configuration of products contained in MTG's Year Six bid.

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48. Pursuant to N.J.S.A. 18A:18A-15, RelComm lodged a challenge to the bid with ACBOE in response to the Year Seven Form 470. In a letter to the ACBOE Purchasing Agent faxed on January 7, 2004 and hand-delivered on January 8, 2004, with a copy to Christopher Brown, Esquire, ACBOE solicitor, Michael Shea, the president of RelComm, put ACBOE on notice that its Year Seven Form 470 violated New Jersey law in the following respects:

- a. The bid specifications again required a mandatory walk-through of the ACBOE facilities in violation of New Jersey bidding statutes and E-Rate regulations, as ACBOE did not follow any other portions of the New Jersey bidding statutory procedures.

- b. The mandatory walk-through was scheduled for January 6, 2004, just 3 business days prior to the arbitrary deadline established by ACBOE and Alemar for the submission of bids.
- c. Defendant Friedman, who conducted the tour, refused to allow audio or video taping during any part of the tour, in violation of well-established procedures followed in New Jersey for public bids.
- d. The site diagrams given to the prospective bidders during the tour did not provide vital information needed for the bid and were only diagrams utilized for fire code inspections, and not network diagrams consisting of wiring runs, equipment locations or specification of any kind.
- e. Friedman told prospective vendors at the walk-through that they should include with their quote a Design Study for the District -- something the District was supposed to have done before applying for E-Rate moneys. He also told vendors that they could add a contingency fee to cover unforeseen conditions not contained in the specifications. Contingency fees, although e-ratable, are meant to cover true emergencies and unforeseen circumstances, not poorly thought out and prepared bid specifications.
- f. The bid specifications contained in the Year Seven Form 470 are not a re-bidding of the Year Six Form 470, as represented by Friedman during the tour, but, instead, are an exact copy of MTG's Year Six bid. Thus, the Year Seven bidders were told to bid on specifications actually drafted by MTG, the prior year's awardee.
- g. MTG's participation in the walk-through as a potential bidder on a project for which it drafted the specifications violates both New Jersey bidding statutes and E-Rate regulations.
- h. Certain bid specifications call for particular brand names and certifications without any provision for equivalents, in violation of the New Jersey bidding statutes.
- i. The bid specifications contain numerous technical defects (including calling for replacement of wiring that has 17 years left under warranty) and are technically deficient, in that they omit critical items that are required by the listed configurations.
- j. During the walk-through, after Friedman declined to answer RelComm's question about who developed the bid specifications, Marilyn Cohen, Assistant Superintendent, announced, contrary to fact, that the specifications had been developed by a committee comprised of Nickels, Haye and her.

49. ACBOE ignored RelComm's challenge of the bid in violation of N.J.S.A.18A:18A-15. Instead, at a Board meeting on January 27, 2004, ACBOE voted, to approve ACBOE's participation in the Year Seven E-Rate program, and, immediately thereafter, Friedman announced that MTG had been awarded a contract by ACBOE for Year Seven.

50. The Form 471 filed with the SLD by ACBOE requesting funding for the Year Seven contract awarded to MTG omitted reference to the High School facility, despite that the High School had been included in the specifications on ACBOE's Form 470. This was done intentionally by ACBOE, at Friedman's suggestion, to bump ACBOE's school lunch participation figures up from 87% to 90%.

51. The timing of the E-Rate program funding from Year Two through Year Five required ACBOE to enter into contracts with RelComm that were, to some extent, contingent upon approval of ACBOE's application for E-Rate funding.

52. By way of example, the deadline for school districts to file applications for funding under Year Five of the E-Rate program was January, 2002. However, applicants were not notified whether their application was accepted until many months later in 2002, and funding still has not been released.

53. Part of ACBOE's request for funding for each year of the E-Rate program was for ongoing service and maintenance of its network. However, because of the time delay between submission of the application for funding and the actual receipt of funding, as stated above, ACBOE committed itself to fund only the service and maintenance portion of the funding request, since service and maintenance of the network was required regardless whether the E-Rate application for that particular year was eventually approved or not. By contrast, the portion of the E-Rate application that pertained to purchase of equipment and other hardware was

contingent upon receipt of funding from the SLD. As a result, although RelComm remains ready, willing and able to install the equipment and hardware funded by the Year Five E-Rate award to ACBOE, it will not deliver that equipment until the funding has actually been received.

54. As a result of the above funding schedule, ACBOE incurred an obligation to pay RelComm for ongoing maintenance and service of the network for Year Five of the E-Rate program prior to its obligation to pay for equipment or hardware.

55. Nickels and his assistant, Haye, have repeatedly published false statements about RelComm and have falsely accused RelComm of improprieties in connection with the E-Rate program. Those false and defamatory statements were uttered and published both at ACBOE facilities and at public meetings of ACBOE.

56. As a result of Nickels' and Haye's defamatory statements about RelComm, RelComm's business reputation has been seriously damaged, and it has lost business and prospective business opportunities as a result.

57. As one example of business lost by RelComm as a result of Nickels' and Haye's defamatory statements, RelComm was negotiating with the City of Atlantic City and the Atlantic City Library to sell them the same type of network as exists at ACBOE and to connect them on the same network as ACBOE so that the three entities could communicate with each other. However, following Nickels' and Haye's statements, the City of Atlantic City terminated negotiations with RelComm. Nickels also presented to the City the name of an alternative vendor, Omicron, to use in place of RelComm.

COUNT ONE
VIOLATION OF NEW JERSEY ANTITRUST ACT, N.J.S.A. 56:9-1, et seq.
(against all defendants)

58. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

59. The defendants have engaged in a conspiracy to commit "bid-rigging" whereby the Plaintiff which has had a prior history, course of dealing and substantial investment with regard to the ACBOE, was improperly denied material information so that it could submit appropriate bids for the Year Six and Year Seven contracts.

60. Upon information and belief, ACBOE and Alemar effectively provided MTG, the recipient of the Year Six and Year Seven contracts, with information that was withheld from other actual and potential bidders, including the Plaintiff.

61. The purpose of the conspiracy was to ensure that MTG, an entity that was favored by the other defendants, would be awarded the Year Six contract in contravention of competitive bidding standards.

62. The joint actions of the defendants herein resulted in the improper award of the Year Six and Year Seven contracts to MTG rather than the Plaintiff, and have improperly restrained competition and caused damage to the public.

63. The defendants' actions constitute a restraint on trade or commerce or a conspiracy to restrain trade or commerce violative of the New Jersey Antitrust Act, N.J.S.A. 56:9-3.

64. The defendants' conduct affects trade or commerce in the State of New Jersey.

65. RelComm is a "person" as defined by N.J.S.A. 56:9-2(a).

66. Defendants are each "persons" as defined by N.J.S.A. 56:9-2(a).

67. As a direct and proximate result of defendants' violations of the New Jersey Antitrust Act, Plaintiff has suffered a loss of property or business, including substantial monetary damages and irreparable harm.

WHEREFORE, Plaintiff demands judgment against all defendants as follows:

- a. Adjudging and declaring that the contract for Year Six between ACBOE and MTG is null and void;
- b. Enjoining ACBOE and MTG from proceeding with the Year Seven contract;
- c. Compelling ACBOE to immediately process in the normal course of business all outstanding amounts due on all accounts receivable for services previously performed by Plaintiff pursuant to contracts for Years One through Five;
- d. Compelling ACBOE to hold a fair and open bidding process, under the supervision of the court, for the award of any further contracts for the 2003-2004 school year and future years;
- e. Awarding plaintiff compensatory damages, treble damages under N.J.S.A. 56:9-12, and punitive damages, as well as attorney's fees, filing fees and costs of suit under N.J.S.A. 56:9-12; and
- f. Awarding such other relief as the court shall deem equitable and just.

COUNT TWO
FRAUD
(against all defendants)

68. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth at length herein.

69. ACBOE, through its representatives, including Nickels and Haye, and Alemar, engaged in fraud by utilizing two separate bid specifications, one for MTG, the entity which ACBOE, Nickels and Alemar favored, and one for all other actual and potential bidders, including the Plaintiff. MTG conspired with these defendants in this unlawful conduct to defraud plaintiff.

70. By utilizing the public bidding process, ACBOE and Alemar also represented that each bid would be fairly, equally and appropriately reviewed, and that the award of the Year Six and Year Seven contracts would be given to the most qualified bidder.